Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1332

THEMIS N. ANASTOS and HUGH M. MATCHETT,
*Petitioners,*

and

WILLIAM V. DEMAIO, M.J.D.M. TRUCK RENTALS, INC., a Pennsylvania corporation,
*Use-Petitioners,*

vs.

EILEEN M. O'BRIEN, as Executrix of the Estate of WILLIAM J. O'BRIEN, JR., Deceased,
*Respondent.*

THEMIS N. ANASTOS and HUGH M. MATCHETT,
*Petitioners,*

vs.

WILLIAM V. DEMAIO, M.J.D.M. TRUCK RENTALS, INC., a Pennsylvania corporation, and EILEEN M. O'BRIEN, as Executrix of the Estate of WILLIAM J. O'BRIEN, JR., Deceased,
*Respondents.*

## APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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APPENDIX

Record From
Appellate Court Of Illinois,
First District
To
Supreme Court Of Illinois
Nisi Prius Gen. No. 68-L-13088
Appellate Gen. No. 61769 & 62806
Supreme Court Gen. No. 48759

Themis N. Anastos and Hugh M. Matchett, Plaintiffs-Appellants,
-vs-
Wm. V. DeMaio, etc., et al,
Defendants And Third Parties Plaintiff-Appellants and
Wm. J. O'Brien, Jr., Defendant Third Party Defendant-Appellee
Filed Sep 20 1976 Clell L. Woods, Clerk

In The Appellate Court Of Illinois
First District
Present Hon. John J. Stamos Presiding Justice, Robert J. Downing, Judge, John C. Hayes, Judge, Ralph L. Siegel, Clerk Richard J. Elrod, Sheriff
Court met pursuant to law
Court opened by proclamation
48759
Themis N. Anastos and Hugh M. Matchett, Plaintiffs-Appellants, vs Wm. V. DeMaio, etc., et al., Defendants and Third Parties Plaintiff-Appellants, and Wm. J. O'Brien, Jr., Defendant Third Party Defendant-Appellee No. 61769 62806, Appeal from the Circuit Court of Cook County Filed Sep 20 1976 Clell L. Woods, Clerk

No. 61769

On April 24th, 1975, the following proceedings were had:

Assigned to the Second Division

Afterwards, on April 16th, 1975, there was filed in the Office of the Clerk of said Appellate Court, a Notice, Motion, which are in the words and figures following, to-wit: * * *

Motion

Now come THEMIS N. ANASTOS and HUGH M. MATCHETT, Plaintiffs-Appellants, by their attorney HUGH M. MATCHETT, and WILLIAM V. DEMAIO and M.J.D.M. TRUCK RENTALS, INC., a Pennsylvania corporation, Defendants, Third Parties Plaintiff, Appellants, by their attorney ALBERT H. BEAVER, and move the Court for an extension of time from April 18th, 1975, to and including May 16th, 1975, in which to file their entire record on appeal, by reason of the fact that part of the case is still pending in the trial court and it is impossible for the Clerk to use any original part of the trial court record in preparing the record on appeal * * * and it is impossible to duplicate the record ordered by April 18th, 1975, and much before May 16th, 1975, the trial court record numbering at least 800 pages.

Another reason for the extension of time is that the litigation in this case * * * is part of other litigation * * *

Order: Allowed.



Afterwards, on June 23rd, 1975, there was filed in the Office of the Clerk of said Appellate Court, a Notice, Petition and Proof of Service, which are in the words and figures following, to wit:

* * *

Petition Now come THEMIS N. ANASTOS and HUGH M. MATCHETT, Plaintiffs-Appellants, by their attorney HUGH M. MATCHETT, and WILLIAM V. DEMAIO and M.J.D.M. TRUCK RENTALS, INC., a Pennsylvania corporation, Defendants, Third Parties Plaintiff, Appellants, by their attorney ALBERT H. BEAVER, and move:

(a) That the Second Division, to whom the case has been assigned since their last motion, disqualify itself or be disqualified from hearing this appeal, and any other appeal that may hereafter be taken from any order or judgment in Circuit Court of Cook County, Illinois, Case No. 68L 13088, on the ground of the obvious prejudice against them and in favor of WILLIAM J. O'BRIEN, JR., Defendant, Third Party Defendant, Appellee, evident in its opinion and judgment on a previous appeal from a previous judgment in that case, to which DEMAIO and MJDM were not party, reported as 3 Ill.App.3d 1014, 279 NE2d 759(1972), which opinion and decision are under attack on this appeal, and on appeal from a judgment in favor of DEMAIO and MJDM against O'BRIEN for $47,093.31, in Case No. 69C 1304, pending in the United States Court of Appeals for the Seventh Cir-

cuit as Case No. 73-2007, involving all parties to this appeal, making it improper for said division to sit on the present appeal:

(b) That all proceedings in this court on this appeal be stayed pending action by the Supreme Court of Illinois or a judge thereof on a motion by the Appellants under Rule 302 for an order that this appeal be taken directly to that Court on the ground that it is a case in which the public interest requires prompt adjudication, intended to be presented to that Court or a judge thereof on Tuesday, June 24th, 1975, at 10:00 A.M., and pending final action by the Circuit Court of Cook County, Illinois, in Case No. 68L 13088, on a motion by O'BRIEN to clarify, and on motion by ANASTOS and MATCHETT to vacate and enter a new judgment in its place and stead, a judgment of that court in favor of ANASTOS and MATCHETT against DEMAIO and MJDM for $33,506.80, combined with a declaratory judgment binding on ANASTOS, MATCHETT, DEMAIO and MJDM and O'BRIEN and BEAVER declaring that ANASTOS and MATCHETT have a statutory charging lien and equitable lien on the judgment in Case No. 60C 1089, on the money in Case No. 64B 10712, and on the cause of action, present judgment, subsequent judgment, and money or property recovered in Case No. 69C 1304, for payment of said judgment until it is satisfied in full; and

(c) In any event, an extension of time in which to file briefs to and including 35 days after this motion is passed on, and in the case of ANASTOS and MATCHETT to and including Tuesday,



September 2nd, 1975 * * *

s/Hugh M. Matchett  s/Albert H. Beaver
HUGH M. MATCHETT  ALBERT H. BEAVER

Verification

Afterwards, on July 28th, 1975, the following proceedings were had:

On motion Appellants that the Second Division disqualify itself, Allowed.

On the same day to-wit, July 28th, 1975, the following proceedings were had

Reassigned to the Third Division.

Afterwards, on August 26th, 1975, the following proceedings were had:

Appellate Court Of Illinois
First District
Re: Themis N. Anastos and Hugh M. Matchett, Plaintiffs-Appellants, v. William V. Demaio, et al, Defendants, Third Parties Plaintiff, Appellants, and William J. O'Brien, Jr., Defendant, Appellee Case No. 61769

By order of the Executive Committee, the Order entered in the above-entitled cause on July 28, 1975, transferring the case to the Third Division, is hereby vacated and set aside.

By further order of the Executive Committee, the above-entitled case is returned to the Second Division.

Enter: s/Henry W. Dieringer
Chairman, Executive Committee

August 26, 1975

Afterwards, on August 28th, 1975, the following proceedings were had:

Order:

On June 23, 1975, plaintiffs-appellants filed a petition with this court requesting (1) that the Second Division of this court disqualify itself in the instant appeal by virtue of the Second Division having rendered an opinion in Anastos, et al. v. O'Brien (1972), 3 Ill.App.3d 1015, 279 N.E.2d 759, it being petitioners' contention the said opinion is under attack in the instant appeal; (2) that this appeal be stayed pending disposition of a motion by petitioners in the Supreme Court of Illinois under Rule 302 of the Rules of the Supreme Court of Illinois; and (3) to extend the time to file briefs to 35 days from disposition of this motion.

Thereafter, on July 1, 1975, the Second Division of this court allowed the motion to disqualify itself and transferred the cause to the Executive Committee of this court for re-assignment. Thereafter, on July 28, 1975 the Executive Committee reassigned the cause to the Third Division and later, on August 26, 1975, the Executive Committee vacated its order of July 28, 1975 and reassigned the instant cause to the Second Division. Therefore, the Second Division of this court does hereby vacate its order of July 1, 19-



75, and the said cause is hereby reinstated on the calendar of the Second Division.

It is the further order of this court that there being no evidence of any matter now pending, as of this date, in this cause before the Illinois Supreme Court, the motion to stay is hereby denied.

It is further ordered that the time for petitioners-appellants to file their brief is hereny extended to October 3, 1975.

Dated: August 28, 1975

s/Robert J. Downing
Robert J. Downing,
Presiding Justice

s/George N. Leighton
George N. Leighton,
Justice

s/John C. Hayes
John C. Hayes,
Justice

Afterwards, on September 19th, 1975, there was filed in the Office of the Clerk of said Appellate Court, a Notice, Proof of Service, Motion and Affidavit, which are in the words and figures following, to-wit:

* * *

Motion by Appellants for an extension of time in which to file briefs to and including December 1st, 1975.

Motion directed to Executive Committee & Second Division:

Now come THEMIS N. ANASTOS and HUGH M. MATCHETT, by their attorney HUGH M. MATCHETT, and WILLIAM V. DEMAIO and M.J.D.M. TRUCK RENTALS, INC., a Pennsylvania corporation, by their attorney ALBERT H. BEAVER, and move the Executive Committee to vacate its order revoking its order assigning this case to the Third Division and reassigning this case to the Second Division, that had previously granted their motion that it disqualify itself or be disqualified from sitting on this appeal on the ground of prejudice of the Court against them and in favor of WILLIAM J. O'BRIEN, JR., for all the reasons previously stated, which may be summarized to be a denial to them of a hearing before an impartial tribunal by the State of Illinois and a deprivation of their right to such a hearing by the State of Illinois in violation of their Federal right to such a hearing as a matter of due process of law, and as a denial to them of their Federal right to such a hearing as a matter of the protection and equal protection of the laws of the State of Illinois and of the Constitution and other laws of the United States, and, as a result, a violation of their Federal rights by the State of Illinois under the 14th Amendment, Section 1, to the Constitution of the United States; and which may also be summarized to be a denial to them of a hearing before an impartial tribunal by the State of Illinois in violation of their State right to such a hearing as a matter of due process of law, and as a matter of the protection and equal protection of



the laws of the State of Illinois and of the Constitution and other laws of the United States, and, as a result, a violation of their State rights by the State of Illinois under Article I, Section 2, of the Constitution of the State of Illinois; and which may also be summarized as a denial to them by the State of Illinois of their State right to a remedy for a judicial injury and wrong under Article I, Section 12, of the Constitution of the State of Illinois; and which may also be summarized as a denial to them by the State of Illinois of their State right to appeal under Article VI, Section 6, of the Constitution of the State of Illinois.

They also contend that the secret method by which the Executive Committee vacated its order assigning this case to the Third Division, and reassigned the case to the Second Division that had already disqualified itself to sit, notice of the reassignment to the Second Division coming from that Division and not from the Executive Committee, without giving them any opportunity to be heard or object, was a denial of due process of law and the protection and equal protection of the laws in violation of Article I, Section 2, of the Constitution of the State of Illinois, and of the 14th Amendment, Section 1, to the Constitution of the United States

They move the Executive Committee to grant them a Prehearing Conference under Rule 310 in regard to this motion.

The attention of the Court is direc-

ted to 23 I.L.P. "Judges" §11 "Disqualification To Act" Pages 101-103, which, in material part, states:

> "No judge should preside in a case in which he is not wholly free, disinterested, impartial and independent.
>
> "The principal on which rules of disqualification of judges are based is that no judge should preside in a case in which he is not wholly free, disinterested, impartial, and independent, and, in general, litigants are entitled to a hearing and determination by an impartial tribunal. * * *"
>
> "A trial judge has no authority to sit in review of his own decisions.
>
> "Bias or prejudice is a ground for disqualifying a judge from hearing a cause. Statements made by a trial judge may disclose bias or prejudice that precludes a fair and impartial hearing and disqualifies the judge."
>
> "It is the duty of a judge to refuse to preside at the trial of a case in which he is disqualified and to promptly on his own motion disqualify himself and have the case reassigned. Where a litigant objects to a judge trying the cause and such objection is not frivolous and is made in apt time, it is better for proper administration of public justice and for the public good, regardless of the fact that the court knows that the reasons assigned are groundless, that some other judge try the cause."



> "A party who obtains a change of venue from one judge of the court, and afterwards goes to trial before him without objection, waives disqualification of the judge resulting from the change."
>
> "Effect of disqualification. The disqualification of a judge generally deprives him of authority to perform any judicial act or to perform any act calling for an exercise of judicial discretion in connection with the pending cause, except to select another judge or to make a transfer of the case in accordance with the law. * * * The fact that a change of venue in the Circuit Court was taken from one judge on the ground of prejudice, and that the same judge afterwards sat as a member of the Appellate Court before which the case was taken, was held not to be prejudicial error, where the other two appellate judges were not subject to the objection made."

ANASTOS, MATCHETT, DEMAIO and MJDM pray discovery on how and why the original appeal in Anastos v O'Brien, 1972, 3 Ill.App.3rd 1015, and the present pending appeal, were assigned to the Second Division, and to the Honorable George N. Leighton and the Honorable John J. Stamos.

A comparison of the decision in Anastos v O'Brien, 1972, 3 Ill.App.3rd 1015, and the Appellants' Brief and supplemental material submitted after oral argument, and their Petition For Rehearing, and the decision of the United States Court of Appeal for the Seventh Circuit in Peresipka vs. Elgin

Joliet And Eastern Railway Company, 19-56, 231 F.2d 268, and the Illinois Attorney's Lien Statute and cases on which it is based, clearly reveals the prejudice complained of.

In the event this motion is denied, they pray that the Court will issue a certificate of importance to enable the questions raised to be decided by the Supreme Court of Illinois, the questions raised being questions involving the construction of the Constitution of the Constitution of Illinois and the Constitution of the U ited States arising for the first time in and peculiar to the Illinois Appellate Court, all proceedings in this Court to be stayed pending the decision of the Supreme Court of Illinois and possible review by the Supreme Court of the United States.

s/Albert H. Beaver
ALBERT H. BEAVER

s/Hugh M. Matchett
HUGH M. MATCHETT

Afterwards, on September 24th, 1975, the following proceedings were had:

Appellate Court Of Illinois
First District

Re: Themis N. Anastos and Hugh M. Matchett, Plaintiffs-Appellants, v. William V. Demaio, et al, Defendants, Third Parties Plaintiff, Appellants, and William J. O'Brien, Jr., Defendant, Appellee Case No. 61769

Order

The Motion of Themis N. Anastos and Hugh M. Matchett, filed September 19,



1975 in the above-entitled cause, moving the Executive Committee to vacate its Order previously entered reassigning this case to the Second Division, having been duly considered by the Executive Committee, is hereby denied.

The alternative motion praying this court issue a Certificate of Importance to the Supreme Court of Illinois, having been duly considered, is also denied.

Enter:

s/Henry W. Dierenger
Chairman, Executive
Committee

September 24, 1975

Afterwards, on October 3rd, 1975, there was filed in the Office of the Clerk of said Appellate Court, a Notice, Proof of Service and Motion, which are in the words and figures following, to-wit:

* * *

Motion directed to Executive Committee and The Court In Banc:

Motion:

Now come THEMIS N. ANASTOS and HUGH M. MATCHETT, Plaintiffs-Appellants, by their attorney HUGH M. MATCHETT, and WILLIAM V. DEMAIO and MJDM TRUCK RENTALS, INC., a Pennsylvania corporation, and renew their motion for the Executive Committee to vacate its order of August 26th, 1975, revoking its order assigning this case to the Third Divis-

ion, and reassigning the case to the Second Division, that had previously granted their motion to disqualify itself or be disqualified from sitting in this case by reason of its prejudice against them and in favor of WILLIAM J. O'BRIEN, JR., for the reasons stated in said previous motion, and in addition state that under the rules governing the Executive Committee, the Committee cannot act through the order of a Judge but it must be concurred in by a majority of the members of the Committee, and the assignment order of August 26th, 1975, is void unless so signed, and the order denying the motion to vacate that order is void unless so signed, which it is not. Plaintiff-Appellants, and Defendants-Appellant, move the Court through its Executive Committee to vacate the order of August 26th, 1975, by an order signed by a majority of the Judges of the Executive Committee, and if their motion is denied, by a majority of the members of the Court sitting in banc, and for an answer in said order to the questions asked in the last motion to vacate the order of August 26th, 1975, as a matter of due process of law, and the protection and equal protection of the laws, and of a remedy for a judicial injury or wrong. This is, in brief, a protest against the failure and abuse of judicial power, in violation of due process of law and the protection and equal protection of the laws in violation of their State rights under Article I, Section 2, of the Constitution of Illinois, and of their Federal rights under the 14th Amendment, Section 1, to the Constitution of the United States, and of their State rights to a remedy for a judicial



wrong in violation of Article I, Section 12 of the Constitution of Illinois, and of their right to impartial judicial review in violation of Article VI, Section 6, of the Constitution of the State of Illinois.

s/HUGH M. MATCHETT
HUGH M. MATCHETT

s/ALBERT H. BEAVER
ALBERT H. BEAVER

Afterwards, On October 14th, 1975, the following proceedings were had:

Appellate Court Of Illinois
First District

Re: Themis N. Anastos and Hugh M. Matchett, Plaintiffs-Appellants, v. William V. Demaio and M.J.D.M. Truck Rentals, Inc., Defendants, Third Party Plaintiffs-Appellants, and William J. O'Brien, Jr., Defendant, Third Party Defendant-Appellee - Case No. 61769

Order

The Executive Committee of this court, all members being present, and having duly considered the motion of THEMIS N. ANASTOS and HUGH M. MATCHETT, Plaintiffs-Appellants, and WILLIAM V. DEMAIO and M.J.D.M. TRUCK RENTALS, INC. a Pennsylvania corporation, moving the Executive Committee to vacate its order of August 26, 1975 and for a hearing by a majority of the members of the court sitting en banc, and for other relief, said motions by a unanimous vote of the Executive Committee, are hereby denied.

Enter:

s/ Henry W. Dieringer
Chairman of the Executive
Committee

October 14, 1975

No. 62806

Afterwards, on October 15th, 1975, the following proceedings were had:

No. 62806 Assigned to the Second Division.

Afterwards, on November 19th, 1975, there was filed in the Office of the Clerk of said Appellate Court, a Notice, Proof of Service and Motion which are in the words and figures following, to-wit:

* * * * * *

MOTION
Case No. 61769

Now come THEMIS N. ANASTOS and HUGH M. MATCHETT, by their attorney HUGH M. MATCHETT, and WILLIAM V. DEMAIO and M.J.D.M. TRUCK RENTALS, INC., a Pennsylvania corporation, by their attorney ALBERT H. BEAVER, and move the Court (a) to disqualify itself or be disqualified from sitting on this case by reason of the obvious prejudice of the Second Division against them in favor of WILLIAM J. O'BRIEN, JR., in the decision of that Division in ANASTOS vs. O'BRIEN, 1972, 3 Ill.App.3rd 1015, (b) to disqualify itself or be disqualified from sitting in case No. 62806 for the same reason, (c) to con-



solidate Case No. 62806 and this case, (d) and to continue the time in which Appellants in each case may file their briefs to February 16th, 1975, for the reasons stated in the Affidavit of HUGH M. MATCHETT hereto attached. We incorporate affidavit attached to motion in 62806.

s/HUGH M. MATCHETT
HUGH M. MATCHETT

ALFRED H. BEAVER

No. 61769
62806

Afterwards, on December 3rd, 1975, the following proceedings were had:

Illinois Appellate Court
First District
Nos. 61769
62806

Order

Appellants present the following motions:

First: That the Second Division of this court disqualify itself from sitting on the captioned matters;

Second: That the case No. 62806 and case No. 61769 be consolidated; and

Third: That appellants be granted until February 16, 1976, to file their briefs in the captioned matters.

It is hereby ordered:

The first motion is denied.
The second motion is allowed.

The third motion is allowed.

s/Robert J. Downing
Robert J. Downing,
Presiding Justice

s/John J. Stamos
John J. Stamos,
Justice

s/George N. Leighton
George N. Leighton,
Justice

Dated: December 3, 1975

Afterwards, on February 18th, 1976, there was filed in the Office of the Clerk of said Appellate Court, a Notice, Proof of Service, Motion and Affidavit, which are in words and figures following, to-wit:

* * * * * *

Motion

For extension of time for filing abstracts and briefs from Monday, February 16th, 1976, when now due, to and including Monday, April 19th, 1976, for reasons stated in affidavit of HUGH M. MATCHETT hereto attached.

Afterwards, On February 24th, 1976, the following proceedings were had:

Appellants, Anastos and Matchett, move the Court for an extension of time to and including April 19th, 1976. in which to file Abstracts and Briefs, Allowed.



Afterwards, on March 31st, 1976, there was filed in the Office of the Clerk of said Appellate Court, a Notice, Proof of Service and Motion, which are in the words and figures following, to-wit:

* * *

Motion

Motion for an extension of time in which to file their briefs from April 5th, 1976, to and including May 17th, 1976, by reason of the fact that litigation directly connected with this litigation is still pending in the Supreme Court of the United States, and in the United States District Court for the Northern District of Illinois, Eastern Division, and in the Circuit Court of Cook County, Illinois, making it inadvisable for them to proceed with this appeal pending further action by those courts, but it is expected that the case may be ripe to proceed by May 17th, 1976.

HUGH M.MATCHETT
and ALBERT H, BEAVER
By s/HUGH M. MATCHETT
HUGH M. MATCHETT

Afterwards, on April 6th, 1976, the following proceedings were had:

Appellants, Anastos and Matchett, move the Court for an extension of time to and including May 17th, 1976M in which to file their brief. Allowed.

Afterwards, on June 21st, 1976, the following proceedings were had:

This cause having this day been reached for hearing and determination, and it appearing to the Court that abstract and briefs have not been filed herein in compliance with the rules of this Court.

IT IS THEREFORE ORDERED BY THE COURT that the appeal in the above entitled cause be and the same is hereby dismissed out of this Court for want of prosecution.

Afterwards, on June 22nd, 1976, there was filed in the Office of the Clerk of said Appellate Court, a Notice, Proof of Service and Motion, which are in the words and figures following, to-wit:

Notice served June 21st, 1976 directed to EILEEN MARIE O'BRIEN, Executrix of the Estate of WILLIAM J. O'BRIEN, JR., Deceased; ALBERT H. BEAVER; BRADLEY BRADLEY LYON & NEDDERMAN; and ISHAM, LINCOLN & BEALE; by mail to them at their respective addresses.

Motion

Now come THEMIS N. ANASTOS and HUGH M. MATCHETT, Plaintiffs-Appellants, by their attorney HUGH M. MATCHETT, and WILLIAM V. DEMAIO and M.J.D.M. TRUCK RENTALS, INC., a Pennsylvania corporation, Defendants-Third Party Plaintiffs-Appellants-Appellees, by their attorney ALBERT H. BEAVER, and suggest to the Court the death of WILLIAM J. O'BRIEN, JR., Defendant, Third Party Defendant, Appellee, on April 8th,



1976, and the appointment of his wife, EILEEN MARIE O'BRIEN, as Executrix of the Estate of WILLIAM J. O'BRIEN, JR., Deceased, by the Circuit Court of Cook County, Illinois, County Department, Probate Division, on May 29th, 1976, File No. 76P 3456, Docket 817, Page 239, with Bradley Bradley Bradley Lyon & Nedderman, 29 South La Salle Street, Chicago, Illinois 60603, as attorneys for the Estate, and prays that she be substituted for the late WILLIAM J. O'BRIEN, JR., as a party to these proceedings, and that summons issue against her in her representative capacity.

They also pray that the time for filing briefs and arguments for appellants be extended to and including 35 days after the Executrix files her appearance in the above entitled cause.

They also suggest that by reason of the fact that the late WILLIAM J. O'BRIEN, JR., filed a Section 72 petition to vacate the judgment of August 8th, 1976, and that petition was still pending at the time of his death, and on the filing of the appearance of the Executrix in the trial court, the Court will either deny or grant the motion to vacate, leading automatically to another appeal, that all proceedings in this Court be stayed until the new record is filed in this Court, and that the Appellants time for filing their briefs be extended to 35 days after that date.

They also move the Court that summons issue against the CONTINENTAL

CASUALTY COMPANY, a Connecticut insurance corporation, the malpractice insurance carrier of the late WILLIAM J. O'BRIEN, JR., covering his claimed liability in this case, as an additional defendant-appellee, summons to issue forthwith.

They also move the Court to grant them a conference with the Court under Rule 310 if it is deemed advisable by the Court in view of the increasing complexity of this litigation.

s/ Hugh M. Matchett
HUGH M. MATCHETT
and
ALBERT H. BEAVER

Afterwards, on June 24th, 1976, there was filed in the Office of the Clerk of said Appellate Court, a Notice, Proof of Service and Motion, which are in words and figures following, to-wit:

Another notice served by mail by mailing it to EILEEN MARIE O'BRIEN, Executrix of the Estate of WILLIAM J. O'BRIEN, JR., Deceased; ALBERT H. BEAVER; BRADLEY BRADLEY LYON & NEDDERMAN; and ISHAM LINCOLN & BEALE.

Motion

Now come THEMIS N. ANASTOS and HUGH M. MATCHETT, Plaintiffs-Appellants, by their attorney HUGH M. MATCHETT, and WILLIAM V. DEMAIO and M.J.D.M. TRUCK RENTALS, INC., a Pennsylvania corporation, Defendants-Third Party Plaintiffs-Appellants-Appellees, by their attorney ALBERT H. BEAVER, and move



the Court to vacate its order of June 24th, 1976, dismissing those appeals for a purported want of jurisdiction, by reason of the fact that there has been no want of prosecution, certainly not since April 8th, 1976, by reason of the death of WILLIAM J. O'BRIEN, JR. making it impossible for the case to proceed without a personal representative being appointed to represent his estate, and without any suggestion of death by ISHAM, LINCOLN & BEALE, the attorneys for the late WILLIAM J. O'-BRIEN, whose duty it was to make the suggestion of death. As a matter of law, it is submitted that this Court has no jurisdiction to dismiss this appeal without first issuing summons against the Executrix of his Estate, and his liability insurance carrier, and bring them before the Court.

Counsel was greatly surprised to discover that this Court, on its own motion, and without noting the effect its order might have on other litigation involving the parties to this litigation in the United States District Court for the Northern District of Illinois, Eastern Division, pending before Judge McGarr, a motion in regard to which will be made tomorrow morning at 10:00 A.M., and a pending series of motions in the Circuit Court of Cook County, Illinois, before Judge Canel, which has been noticed for hearing by him on Tuesday, June 29th, 1976.

Counsel moves the Court for an immediate conference under Rule 310 in regard to this matter.

s/HUGH M. MATCHETT
HUGH M. MATCHETT

Afterwards, on June 29th, 1976, the following proceedings were had:

Order

Motion to vacate dismissal for want of prosecution denied.

s/ John J. Stamos
John J. Stamos,
Presiding Justice

s/ Robert J. Downing
Robert J. Downing,
Justice

s/ Mel R. Jiganti
Mel R. Jiganti,
Justice

Dated: June 29, 1976

Afterwards, on July 8th, 1976, there was filed in the Office of the Clerk of said Appellate Court, Notice of Emergency Motion, Proof of Service, Motion and Affidavit, which are in the words and figures following, to-wit:

* * *

Motion

Now come THEMIS N. ANASTOS and HUGH M. MATCHETT, Plaintiffs-Appellants, by their attorney HUGH M. MATCHETT, and move the Court to vacate its orders of June 21st, 1976, promulgated June 24th, 1976, its effective date if a valid order, and its order of June 29th, 1976, for the reasons stated herein, and in the affidavit of HUGH M. MATCHETT



hereto attached as part of this motion, and, in the event this motion is denied, for a stay of mandate pending the filing of a petition for appeal as a matter of right or, in the alternative, for leave to appeal, in the Supreme Court of Illinois, which HUGH M. MATCHETT states in good faith he and ANASTOS will file if the motion is denied, and action thereon by the Supreme Court of Illinois, and, in the event the motion is allowed, for the Court to grant the relief prayed in the motion filed June 22nd, 1976. They again renew their motion that this Court disqualify itself on the ground of prejudice against them and DEMAIO and MJDM and in favor of WILLIAM J. O'BRIEN, JR., AND EILEEN MARIE O'BRIEN from sitting in this case, previously asserted. In support of their motions they allege:

1. As a matter of law and fact there has been no want of prosecution in this Court or any other Court in regard to this litigation.

2. The order of June 21st, 1976, promulgated June 24th, 1976, is a void order because it is only signed by one judge when the Constitution of the State of Illinois provides that the concurrence of two judges in any decision is necessary to the decision.

3. The order of June 29th, 1976, denying the motion filed on June 24th, 1976, is a void order by reason of the fact that although it is signed by three judges it denies a motion to vacate a void order, which is a deprivation of property and procedural rights by the State of Illinois without due process of

law, and a denial of the protection and equal protection of the laws by the State of Illinois, and a remedy by appeal, in violation of the 14th Amendment, Section 1, to the Constitution of the United States, and in violation of Article II, Section 2, and Article II, Section 12, and Article 6, Section __, of the Constitution of the State of Illinois.

4. The order of June 21st, 1976, promulgated June 24th, 1976, and the order of June 29th, 1976, are void orders because they are signed by judges who have previously disqualified themselves on the ground of prejudice against the appellants in favor of WILLIAM J. O'BRIEN, JR., and under the law no judge who has once disqualified himself from sitting in a case can sit over the objection of the parties praying such disqualification.

5. Under Section 54(2) of the Illinois Civil Practice Act, on the death of a party where the action is one which survives, the action is suspended until the proper party or parties are substituted by order of Court within 90 days after the death is suggested of record, in this Case June 22nd, 1976, and the proper person to be served with summons is the personal representative appointed to handle the deceased's estate, where proceedings have been instituted to probate the Estate. The motion filed June 22nd, 1976, which this Court has ignored, is made in compliance with the statute.

6.As a result of the conduct of this Court to date, ANASTOS and MATC-



HETT, and even DEMAIO and MJDM, have been deprived of their property and procedural rights by the State of Illinois, and of the protection and equal protection of the laws, and of a remedy by appeal, in violation of Article 1, Section 2, and Article 1, Section 12, and Article 6, Section , of the Constitution of the State of Illinois, and of the 14th Amendment, Section 1, to the Constitution of the United States.

7. ANASTOS and MATCHETT intend to file a supplemental motion in support of this motion before the week is out.

8. This motion is filed in good faith and not for purposes of delay.

s/HUGH M. MATCHETT
HUGH M. MATCHETT

Affidavit

Now comes HUGH M. MATCHETT and, after first being duly sworn on oath, deposes and says:

1. Section 54(2) of the Illinois Civil Practice Act provides:

"If a party to an action dies and the action is one which survives, the proper party or parties may be substituted by order of court upon motion. If a motion to substitute is not filed within 90 days after the death is suggested of record, the action may be dismissed as to the deceased party."

"If the death of a party to a personal action is suggested of re-

cord and no petition for letters of office for his estate has been filed, the court, upon motion and after notice to the party's heirs, legatees or devissees as the court directs, and without opening of an estate, may appoint a special administrator for the deceased party for the purpose of prosecuting or defending the action. If a legal representative is appointed for the estate before judgment is entered, and his appointment is suggested of record in the action, the court shall order that he be substituted for the special administrator."

2. On April 8th, 1976, WILLIAM J. O'BRIEN, JR., died. The following litigation was pending against him at the time of his death:

(a) * * * Circuit Court of Cook County, Illinois, County Department, Law Division, Case No. 68L 13088 * * *

(b) * * * Illinois Appellate Court, First District, Case No. 61769 * * *

(c) * * * Illinois Appellate Court, First District, Case No. 62806 * * *

(d) * * * Petition * * * To Vacate The Judgment of August 8th, 1975, in Circuit Court of Cook County, Illinois, County Department, Law Division, Case No. 68L 13088 * * *

(e) * * * United States District Court for the Northern District of Illinois, Eastern Division, Case No. 64B 10712 * * *



3. On Tuesday, February 17th, 1976, * * * Appellants, filed a motion in Case No. 61769 in the Illinois Appellate Court, First District, for an extension of time to and until April 19th, 1976, for filing abstracts and briefs, which was allowed to April 5th, 1976.

4. On March 31st, 1976, they filed a motion in Case No. 61769 in the Illinois Appellate Court, First District, for an extension of time to and until May 17th, 1976, for filing abstracts and briefs, which was allowed to April 19th, 1976.

5. A few days after April 8th, 1976, affiant heard a rumour that WILLIAM J. O'BRIEN, JR., was dead, and telephoned TERRY R. MORITZ of the firm of ISHAM, LINCOLN & BEALE to verify the report, which he did. Mr. MORITZ also advised him that he understood the Estate would be probated and letters of administration would be issued to his widow as executrix of the Estate.

6. Affiant understood that all litigation was suspended until letters of administration were issued to the executrix on whom summons could be served and notice given and he stopped working on all the litigation until that took place.

7. On May 3rd, 1976, EILEEN MARIE O'BRIEN filed a petition in the Circuit Court of Cook County, Illinois, Probate Division, File No. 76P 3456, Docket 817, Page 329, for letters of administration as Executrix of the Estate of WILLIAM J. O'BRIEN, JR., Deceased.

* * *

9. Affiant discussed the situation with TERRY R. MORITZ and Mr. EDWARD BRADLEY of the firm of BRADLEY, BRADLEY, LYONS & NEDDERMAN, attorneys for EILEEN MARIA O'BRIEN, and checked the file several times to note the progress of the Estate.

* * *

11. On May 26th, 1976, EILEEN M. O'-BRIEN was granted letters of Administration of the Estate of WILLIAM J. O'BRIEN, JR., Deceased. Affiant did not know it at the time.

12. On Tuesday, June 8th, 1976, affiant telephoned TERRY R. MORITZ, and asked him to meet affiant at Judge CANEL's chambers for a conference with the Judge as to how the Section 72 petition of WILLIAM J. O'BRIEN, JR., and other pending motions in Case No. 68L 13088 should be handled, Judge CANEL having previously entered an order staying all proceedings pending action by this Court on these appeals, and action by the Supreme Court of the United States on petitions for writ of certiorari from the judgment of the United States Court of Appeals for the 7th Circuit, Judge CANEL told affiant and Mr. MORITZ he would pass on the motions on proper notice.

13. On or about June 10th, 1976, affiant telephoned Mr. NEDDERMAN about the Estate and was advised that letters had been issued May 26th, 1976, to EILEEN M. O'BRIEN. The Probate file shows that the Executrix published for claims on June 8th, 15th, and 22nd, 1976, and that all claims must be filed within 6 months after May 26th, 1976.



14. On June 11th, 1976, affiant began working on motions for leave to have summons issue against EILEEN M. O'BRIEN, as Executrix of the Estate of WILLIAM J. O'BRIEN, JR., Deceased, in Case No. 68L 13088, in the Circuit Court of Cook County, and in Case No. 64B 10712 in the United States District Court, and in Cases No. 61769 and 62806 in this Court on these appeals.

15. On June 19th, 1976, he served notice of his motion in 64B 10712, on EILEEN MARIA O'BRIEN and ALBERT H. BEAVER and MAURICE M. LOMAN and BRADLEY BRADLEY LYON & NEDDERMAN and ISHAM LINCOLN & BEALE and MJDM and NACHMAN MUNITZ & SWEIG and NATHAN YORKE, for Friday, June 25th, 1976. On Monday, June 21st, 1976, he served notice of his motion for Tuesday, June 22nd, 1976, on EILEEN MARIE O'BRIEN and BRADLEY BRADLEY LYON & NEDDERMAN and ALBERT H. BEAVER and ISHAM LINCOLN & BEALE. On Tuesday, June 22nd, 1976, he served notice of his motion in 68L 13088 for June 29th, 1976, on the same persons named in the last sentence.

16. On June 24th, 1976, at 5:00 P,M., he noticed in the Chicago Law Bulletin for that date that these appeals had been dismissed that day for want of prosecution. He immediately typed up a motion to vacate that order based on the ground there had been no want of prosecution, and served notice of that motion on the addressees previously named in his notice of motion filed June 22nd, 1976, and filed it the next morning before 0900.

17. On the morning of June 25th,

1976, he received a copy of the purported order of this Court signed by John J. Stamos, Presiding Justice, dated June 21st, 1976, that had, apparently, been promulgated on June 24th, 1976, the date from which it would take effect, if a valid order.

18. On June 25th, 1976, the Honorable FRANK J. McGARR granted affiant's motion for summons to issue against EILEEN M. O'BRIEN, as Executrix of the Estate of WILLIAM J. O'BRIEN, JR., Deceased. On June 29th, 1976, the Honorable DAVID A. CANEL allowed affiant's motion for summons to issue against her in that capacity. On June 29th, 1976, this Court denied his motion to vacate the order of June 24th, 1976 (or June 21st, 1976). This Court has ignored his motion filed May 22nd, 1976. No objection has been made to any of the relief requested in any of the motions,

19. It is affiant's personal and professional opinion that the difference in treatment accorded ANASTOS and MATCHETT and DEMAIO and MJDM by Judge CANEL and Judge McGARR on the one hand and this Court on the other is due in part to the prejudice of this Court against them and in favor of the late WILLIAM J. O'BRIEN, JR., and his widow, EILEEN MARIA O'BRIEN, previously complained of on these appeals.

20. It is affiant's professional opinion that there has been no want of prosecution, that the order dated June 21st, 1976, and promulgated June 24th, 1976, is a void order because it is only signed by one judge, and does not show the identity or signature of any



other judge when Article 6, Section , of the Constitution of the State of Illinois specifies that the concurrence of two judges is necessary to a decision, and the litigant has a right to know who the judges are that make the findings of fact and law inherent in the decision of the court for or against him, and the order of June 29th, 1976, although signed by three judges, is a void order because the concurrence of three judges in an order denying a motion to vacate a void order cannot cure the defect in the void order, and is automatically a deprivation of property and procedural rights by the State of Illinois without due process of law, and a denial by the State of Illinois of the equal protection of the laws, and the protection of the laws, in violation of the 14th Amendment, Section 1, to the Constitution of the United States, and of Article 1, Section 2, of the Constitution of the State of Illinois. It is also his considered professional opinion that the judges who have granted a motion to disqualify themselves for prejudice have no jurisdiction to sit in the case in which it is granted over the objection of the litigants making the motion or without their express consent. It is his professional opinion that the motion to vacate the order of June 21st, 1976, promulgated June 24th, 1976, and the order of June 29th, 1976, are well taken in law, for the reasons stated therein.

s/HUGH M. MATCHETT

Verification

Afterwards, on July 22nd, 1976, the following proceedings were had:

Order

Appellants' motions to vacate the court's orders of June 21, 1976 and June 29, 1976 are hereby denied.

s/John J. Stamos
John J. Stamos,
Presiding Justice

s/Robert J. Downing
Robert J. Downing,
Justice

s/Mel R. Jiganti
Mel R. Jiganti
Justice

Dated: July 22, 1976

I, Leslie V. Beck, Clerk of the Appellate Court, in and for the First District of the State of Illinois and keeper of the records, files and seal thereof, DO HEREBY CERTIFY That the foregoing is a true copy of the final order and judgment and all other proceedings of the said Appellate Court in the above entitled cause, of record in my office.

IN TESTIOMNY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 10th day of September in the year of our Lord one thousand nine hundred and Seventy-Six.

s/RALPH L. SIEGEL
Clerk of the Appellate Court of the



First District, Illinois.

On October 27th, 1975, ANASTOS and MJDM filed a motion addressed to the Appellate Court in Banc, moving the Court sitting in Banc to overrule the order of the Executive Committee entered October 14th, 1975, for the reasons stated in their motion filed October 3rd, 1975, and to overrule the order of the Executive Committee entered September 24th, 1975, for the reasons stated in their motion filed September 19th, 1975, and to vacate the order entered by the Executive Committee on August 26th, 1975, vacating its order of July 28th, 1975, reassigning the case to the Third Division, for the reasons stated in their petition filed June 23rd, 1975, and their motion filed September 19th, 1975, and their motion filed October 3rd, 1975, and pointed out that ANASTOS had just filed the record on appeal from the judgment of August 8th, 1975, as Case No. 62806, and expected that an appeal from an anticipated order granting or denying a Section 72 petition to vacate that judgment would be filed shortly. On October 31st, 1975, the Clerk of the Court returned the motion and notice and twenty copies stamped filed October 27th, 1975, with a covering letter that he had been instructed by the Court to advise Mr. Matchett that the Court had no jurisdiction to sit in Banc. The Clerk did not state who the Court is that gave him his instruction, but an educated guess would be that it was the Chairman of the Executive Committee.

October 31, 1975

Messrs. Hugh M. Matchett and Albert H. Beayer
c/o Hugh M. Matchett
10 South LaSalle Street
Chicago, Illinois 60603

Re: Gen. No. 61769, Themis N. Anastos, et al.,
v. William V. DeMaio, et al.

Gentlemen:

I have been instructed by the Court to advise you that there are no statutory or rule provisions authorizing the Appellate Court, First District, Illinois to sit en banc to consider motions.

Therefore, at the direction of the Court, I am returning herewith the original and the copies of your notice and motion moving this Court to sit en banc for the purpose of overruling an order entered by the Executive Committee of this Court in the above cause.

Very truly yours,

LESLIE V. BECK
Clerk of the Appellate Court
First District, Illinois

LVB:rs

Enclosure

cc: Isham, Lincoln & Beale
One First National Plaza
42nd Floor
Chicago, Illinois 60670



Record From
Supreme Court of Illinois
To
Supreme Court of the United States

Index of Documents Transmitted To
The Supreme Court of the United States

1. Petition for leave to appeal filed August 16, 1976 from Appellate Court First District 61769 62806

2. Motion by petitioners filed August 16, 1976, suggesting death of William J. O'Brien, Jr., and that Eileen M. O'Brien, Jr., be substituted as a party respondent, and for issuance of summons.

3. Order of Justice Walter V. Schaefer filed August 26, 1976, continuing the motion by petitioners suggesting death of William J. O'Brien, and that Eileen M. O'Brien as Executrix of the Estate of William J. O'Brien, Jr., be substituted as a party respondent, and for issuance of summons for disposition by the full court.

4. Mandate of the Supreme Court of the State of Illinois denying petition for leave to appeal September 29, 1976.

5. Order entered September 29, 1976, denying motion by petitioners suggesting death of William J. O'Brien, Jr., and that Eileen M. O'Brien as Executrix of the Estate of William J. O'Brien, Jr., be substituted as a party respondent, and for issuance of summons.

6. Certification.

IN THE

SUPREME COURT OF ILLINOIS

Case No. 48759

THEMIS N. ANASTOS
and HUGH M. MATCHETT,
Petitioners,
vs
WILLIAM V. DEMAIO
and M.J.D.M. TRUCK RENTALS, INC.,
a Pennsylvania corporation,
Use-Petitioners, Respondents,
and
EILEEN M. O'BRIEN, as Executrix
of the Estate of WILLIAM J.
O'BRIEN, JR., Deceased,
Respondent.

Petition For Appeal As A Matter Of Right
From The Appellate Court Of Illinois,
First Judicial District,
Or,
In The Alternative, For Leave To Appeal.
There On Appeal from the Circuit Court
Of Cook County, Illinois, County Depart-
ment - Law Division. Honorable David A.
Canel, Judge Presiding.

Petition For Appeal As A Matter Of Right

Filed
Aug 16 1976 Clell
L. Woods, Clerk

Hugh M. Matchett
10 S. La Salle Street
Chicago, Illinois 60603
Attorney for Petitioners



Petition For Appeal As A Matter Of Right

THEMIS N. ANASTOS and HUGH M. MATCH-ETT, Petitioners, and WILLIAM V. DEMAIO and M.J.D.M. TRUCK RENTALS, INC., a Pennsylvania corporation, Use Petitioners, by HUGH M. MATCHETT, Petitioners' attorney, petition the Court for appeal as a matter of right from a purported judgment of the Appellate Court of Illinois, First Judicial District, Second Division, purportedly entered on June 21st, 1976, purportedly dismissing their joint appeal from a judgment dismissing a third party action against one WILLIAM J. O'BRIEN, JR., for a purported want of prosecution in the Appellate Court, or, in the alternative, petition the Court for leave to appeal.

THEMIS N. ANASTOS and HUGH M. MATCH-ETT, Petitioners, by HUGH M. MATCHETT, their attorney, separately petition the Court for appeal as a matter of right from the same purported judgment pur-portedly dismissing their appeal from a monetary and declaratory judgment in their favor against WILLIAM V. DEMAIO and M.J.D.M. TRUCK RENTALS, INC., a Pennsylvania corporation, and one WIL-LIAM J. O'BRIEN, JR., which they deemed inadequate, for a purported want of prosecution in the Appellate Court, or, in the alternative, petition the Court for leave to appeal.

No opinion other than the order it-self was rendered by the Appellate Court. The judgment of dismissal for want of prosecution is set out as Ap-pendix "A".

Petitioners suggest to the Court the death of WILLIAM J. O'BRIEN, JR., on April 8th, 1976, and the appointment of his widow, EILEEN M. O'BRIEN, as Executrix of the Estate of WILLIAM J. O'BRIEN, JR., Deceased, by the Circuit Court of Cook County, Illinois, Probate Division, on or about May 26th, 1976, File No. 76P 3456, Docket 817, Page 239, with Bradley Bradley Lyon & Nedderman, 29 South La Salle Street, Chicago, Illinois 60603, as attorneys for the Estate, and prays that she in her representative capacity be substituted for the late WILLIAM J. O'BRIEN, JR., as a party respondent on this petition for appeal as a matter of right, or, in the alternative for leave to appeal, and that the Clerk be directed to issue summons against her in that capacity, for service by the Sheriff of Cook County, Illinois, forthwith.

No abstracts or excerpts or briefs were filed in the Appellate Court.

Appeal is taken as a matter of right because the case involves questions arising under the Constitution of the State of Illinois and under the Constitution of the United States arising for the first time in the Appellate Court in and as the result of the action of the Appellate Court.

Points Relied Upon For Reversal Of The Judgment

I

Under Section 54(2) Of The Illinois Civil Practice Act The Petitioners Were Not Guilty Of Any Want Of Pros-



ecution During The Period April 8th, 1976, And May 26th, 1976, For Want Of Anybody To Prosecute Against, And During The Period May 27th, 1976, And June 22nd, 1976, By Reason Of The Fact They Acted Promptly Within The Sixty Day Period Following The Death Of Mr. O'BRIEN For Filing A Motion Suggesting His Death And Asking That His Executor Be Substituted In His Place And Stead.

II

The Order Of June 21st, 1976, Was A Void Order Because It Was A Purported Adjudication Of Want Of Prosecution Signed By One Judge, And The Orders Refusing To Vacate That Order, Although Signed By Three Judges Could Not Cure The Defect In The Order Which Is Jurisdictional And The Voidness Of The Order Cannot Be Cured By Another Order Signed By Three Judges.

III

The Order Of June 21st, 1976, Was A Void Order Because It Was Signed By The Judges Of A Division Who Had Once Disqualified Themselves From Sitting On The Case By Reason Of Prejudice In Favor Of The Defendant O'BRIEN And Had No Right To Sit Or Be Assigned To Sit Any Further In The Case Over Objection By The Parties Charging Prejudice.

IV

The Appellate Court, The Executive Committee Of The Appellate Court, And The Third Division, Violated Petitioners' State And Federal Constitutional Rights

Under Article I, Section 2, And Section 12, And Article VI, Section 6, Of The Constitution of the State Of Illinois, And Under The 14th Amendment, Section 1, To The Constitution Of The United States, In Regard To Due Process Of Law, And The Protection And Equal Protection Of The Laws, A Remedy For A Judicial Wrong, And Their Right To Appeal And To Have Their Appeals Decided By An Impartial Tribunal.

V

The Illinois Appellate Court Was Guilty Of An Abuse Of Discretion, If Any It Had, In Dismissing The Appeals For A Purported Want Of Prosecution Under The Circumstances Of This Case, And In Failing To Vacate The Order Of Dismissal After All The Circumstances Involved Had Been Made Apparent.

VI

The Executive Committee Of The Appellate Court Has General Administrative Jurisdiction, And The Appellate Court Has Jurisdiction To Sit In Banc, And Has Jurisdiction To Vacate An Order Assigning A Case To A Division, But Has No Jurisdiction To Assign A Case To A Division That Has Already Disqualified Itself On The Ground Of Prejudice, And Is Guilty Of Judicial Misconduct In Attempting To Do So, And In Refusing To Vacate Its Order Reassigning The Case To That Division.

Statement Of Facts Pertinent To This Appeal



* * * * *

ARGUMENT

Why Review By The Supreme Court Is Demanded And Warranted

It is demanded by reason of the questions arising under the Constitution of the State of Illinois and under the Constitution of the United States arising in and as a result of the actions and judicial misconduct of the entire Illinois Appellate Court, and of its Executive Committee, and of the judges sitting in the Second Division, specified in the Statement of Facts, all of which questions were raised in the Appellate Court for the first time in that Court, and were passed on by that Court in some form or other adversely to Petitioners and DEMAIO and MJDM, their judgment debtors.

This is a classic case requiring appeal as a matter of right with the result that failure to grant it would either be an adjudication that all questions arising for the first time in the Appellate Court under the Constitution of the State of Illinois or the Supreme Court of the United States were without merit or a denial of petitioners State and Federal constitutional right under Article VI, Section 5, of the Constitution of the State of Illinois, and under Article I, Section 2, and Section 12 of said constitution, and under the 14th Amendment, Section 1, to the Constitution of the United States. This Court has no real discretion in the matter, but if it deems review to be a mat-

ter of discretion, it should grant review because of the seriousness of the issues of appellate procedure inherently involved in this litigation apart from any question of a constitutional nature.

## Why The Decision Of The Appellate Court Should Be Reversed

The judgment of the Illinois Appellate Court should be reversed because the Court has violated the constitutional rights of the parties, State and Federal, and has clearly violated the provisions of the Civil Practice Act, and is guilty of a grave abuse of discretion in any respect.

Section 54(2) of the Illinois Practice Act provides:

> "If a party to an action dies and the action is one that survives the proper party or parties may be substituted by order of court upon motion. If a motion to substitute is not filed within 90 days after the death is suggested of record, the action may be dismissed as to the deceased party."

> "If the death of a party to a personal action is suggested of record and no petition for letters of office for his estate has been filed, the court, upon motion and after notice to the party's heirs, legatees or devisees as the court directs, and without opening of an estate, may appoint a special administrator for the deceased party for the purpose of prosecuting or defending the action. If a legal representative is appointed for the estate before judgment is entered, and his appointment is suggested of record in the action, the court shall order that he be substituted for the special administrator."



In this case the litigation was suspended on April 8th, 1976, by the death of the defendant WILLIAM J. O'BRIEN, JR. Counsel acted immediately to ascertain if an estate would be opened and who the Executor would be. On May 26th, 1976, his widow was appointed Executrix of his Estate. Counsel acted promptly to have her substituted for her husband well within 90 days of the date of death. There was no want of prosecution between April 8th, 1976, and May 26th, 1976, for want of anybody to prosecute against. There was no want of prosecution between May 26th, 1976, and June 22nd, 1976, because counsel had not been advised promptly of the appointment of the Executrix and he had to move on may fronts.

No judges except the judges of the Illinois Appellate Court, First District, denied Petitioners' motion to substitute the widow in her husband's place and stead.

The sorry display of judges granting motions to disqualify themselves on the ground of prejudice against one party in favor of another, and then attempting to sit on the case without the litigants' consent, and dismissing an appeal for want of prosecution when there has been

no want of prosecution is a disgrace. There is no need to insult this Court by citing precedents. It is axiomatic that once a judge has disqualified himself on the ground of prejudice against one litigant in favor of his opponent he cannot properly sit, and should not be permitted to sit over objection in the same case, and cannot properly be assigned by other judges to sit on the case under such circumstances.

CONCLUSION

Review by the Supreme Court of Illinois is demanded. Review by the Supreme Court of Illinois is warranted. The judgment of dismissal by the Illinois Appellate Court should be reversed. The constitutional issues and procedural issues and jurisdictional issues raised and decided or avoided in and as a result of the judgment of dismissal and the other orders entered by the Appellate Court should be decided by this Court.

Motion for substitution.

O R D E R

The motion of the petitioners for the substitution of parties and issuance of summons is continued for disposition by the full court.

Dated at Chicago, Illinois, this 24th day of August, 1976.

E N T E R



s/ Walter V. Schaefer
Justice of the Supreme Court
of Illinois

Filed Aug 20 1976 Clell L. Woods,
Clerk

Be It Remembered, that, to-wit on the 29th day of September 1976, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to wit:

| | |
|---|---|
| Themis N. Anastos and Hugh M. Matchett, Petitioners, | )Petition for )Leave to |
| No. 48759 vs. | )Appeal from )Appellate |
| William V. Demaio and M.J.D.M. Truck Rentals, Inc., a Pennsylvania corporation, Petitioners, | )Court First )District )61769 62806 ) ) ) |
| William J. O'Brien, Jr., Respondent. | ) ) |

And now, on this day the Court having duly considered the Petition for Leave to Appeal herein and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondent recover of and from the said Petitioners costs by him in this behalf expended, to be taxed, and that he have execution therefor.

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois

and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

It is hereby ordered that the motion by petitioners suggesting death of WILLIAM J. O'BRIEN, JR., be substituted as a party respondent, and for issuance of summons be, and the same is, denied.

Certificate of Clerk
dated 25th day of January
1977

s/Clell L. Woods,
Clerk,
Supreme Court of Illinois